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CENTRAL DISTRICT OF CALIFORNIA  
BY: TG DEPUTY

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## Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT,**

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

MICHELL T. FRANKLIN, ) Case No. 8:18-cv-02085-JLS-DFMx  
KARA SAMPSON, )  
CYBELE A. MUNSON, )  
on behalf of themselves and all ) Complaint filed July 11, 2018  
persons similarly situated, ) Trial Date:  
Plaintiff, ) Pre-Trial Date:  
 ) Discovery Cutoff:  
 ) **Class Action**  
v. )  
 ) **SECOND AMENDED COMPLAINT**  
MIDWEST RECOVERY ) 1. Violation of California Consumer  
SYSTEMS, LLC., COOPER ) Credit Reporting Agencies Act (Civil  
FINANCIAL, LLC PREVIOUSLY ) Code § 1785 et. seq.)  
SUED AS DOE NO. 1, ) 2. Violation of California Unfair  
MARK GRAY PREVIOUSLY ) Competition Law (Business and  
SUED AS DOE NO. 2, ) Professions Code § 17200)  
NATIONAL CREDIT )  
ADJUSTERS, LLC PREVIOUSLY )  
SUED AS DOE NO. 3, )

1 DEBT MANAGEMENT, LLC )  
2 PREVIOUSLY SUED AS DOE )  
3 NO. 4, AND DOES 5 THROUGH )  
4 100 INCLUSIVE, )  
5 ) Defendants. ) Department 10-A  
 ) Hon. Josephine L. Staton

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6 Plaintiffs allege as follows:

7 **PARTIES**

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9 1. Plaintiffs MICHELL T. FRANKLIN, KARA SAMPSON (formerly known  
10 as Kara Christensen), and CYBELE A. MUNSON, individuals, bring this  
11 action on behalf of themselves, and on behalf of a class of similarly  
12 situated persons pursuant to Code of Civil Procedure § 382. Plaintiffs are  
13 residents of the State of California and competent adults.

14

15 2. Plaintiffs are informed and believe and thereupon allege that Defendant  
16 MIDWEST RECOVERY SYSTEMS, LLC ("Midwest") is now, and at all  
17 times mentioned in this Complaint was, a limited liability company based  
18 in St. Charles, Missouri. Defendant has not designated a principal place  
19 of business in the State of California.

20

21 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant  
22 COOPER FINANCIAL, LLC ("Cooper") is now, and at all times mentioned  
23 in this Complaint was, a limited liability company that is a citizen of the  
24 State of Florida. It was previously sued and named as Doe Defendant no.  
25

26 1.

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1 4. Plaintiffs are informed and believe, and thereupon allege, that Defendant  
2 MARK GRAY ("Gray") is now, and at all times mentioned in this  
3 Complaint was, a natural person and citizen of the State of Florida. He  
4 was previously sued and named as Doe Defendant no. 2.

5 5. Plaintiffs are informed and believe, and thereupon allege, that Defendant  
6 NATIONAL CREDIT ADJUSTERS, LLC ("NCA") is now, and at all times  
7 mentioned in this Complaint was, a limited liability company that is a  
8 citizen of the State of Kansas. It was previously sued as Doe Defendant  
9 no. 3.

10 6. Plaintiffs are informed and believe, and thereupon allege, that Defendant  
11 DEBT MANAGEMENT, LLC ("Debt Management") is now, and at all  
12 times mentioned in this Complaint was, a limited liability company that  
13 is a citizen of the State of Florida. It was previously sued as Doe Defendant  
14 no. 4.

15 7. Plaintiffs do not know the true names or capacities of the Defendants sued  
16 herein as DOES 5 through 100 inclusive, and therefore sue these  
17 Defendants by such fictitious names. Plaintiffs will amend this complaint  
18 to allege their true names and capacities when ascertained. Plaintiffs are  
19 informed and believe, and thereon allege, that each of these fictitiously  
20 named Defendants is responsible in some manner for the occurrences  
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1 herein alleged, and that Plaintiffs' damages as herein alleged were  
2 proximately caused by those defendants. Each reference in this complaint  
3 to "Defendant" or "Defendants" or to a specifically named defendant  
4 refers also to all defendants sued under fictitious names.

5 8. Plaintiffs are informed and believe, and thereon allege, that at all times  
6 herein mentioned each of the Defendants, including all Defendants sued  
7 under fictitious names, and each of the persons who are not parties to this  
8 action but are identified by name or otherwise throughout this complaint,  
9 was the alter ego of each of the remaining defendants, was the successor  
10 in interest or predecessor in interest, and was the agent and employee of  
11 each of the remaining defendants and in doing the things herein alleged  
12 was acting within the course and scope of this agency and employment.  
13  
14

#### CLASS ALLEGATIONS

15 9. Plaintiffs are members of the Main Class of persons, the members of  
16 which are similarly situated to each other member of that class. The Main  
17 Class is defined as follows:  
18

19 All California residents whose SUBJECT LOAN  
20 DEBT INFORMATION was furnished by Defendant  
21 Midwest to consumer reporting agencies during the  
22 past two years from filing of the original complaint.  
23 For purposes of this definition, "SUBJECT LOAN  
24 DEBT INFORMATION" means information that a  
25 debt was allegedly owed to any of the following  
26 original creditors: VIP PDL Services, LLC, a/k/a VIP  
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Loan Shop; SCS Processing, LLC, a/k/a Everest Cash Advance; Action PDL Services, LLC, a/k/a Action Payday; BD PDL Services, LLC, a/k/a Bottom Dollar Payday, Integrity PDL Services, LLC, a/k/a Integrity Payday Loans, a/k/a IPL Today; My Quick Funds d/b/a Sierra Financial, LLC; Fast EFunds a/k/a FastEfunds.com.

10. Plaintiffs Sampson and Munson are members of the Restitution Subclass of persons, the members of which are similarly situated to each other member of that subclass. The subclass is defined as follows:

All members of the Main Class who paid money to Defendant Midwest after Midwest furnished the SUBJECT LOAN DEBT INFORMATION to consumer reporting agencies.

11. Plaintiffs are informed and believe, and thereupon allege, that the Main Class consists of approximately 11,000 persons and the Restitution Subclass consists of approximately 200 persons.

12. The identity of the members of the classes is ascertainable from Defendant Midwest's own business records or those of its agents.

13. The Plaintiffs and Class Members' claims against Defendants involve questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual Class Members in that all Class Members had alleged payday loan debt that was reported by Defendant Midwest to consumer reporting agencies and, in each instance, Defendant reported an illegal and void debt, and in some cases the Class

1 Members paid money to Midwest.

2 14. The claims of Plaintiffs are typical of the claims of the members of the  
3 Classes.

5 15. Plaintiffs can fairly and adequately represent the interests of the Classes.

6 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE**  
7 **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES**  
8 **ACT, CIVIL CODE § 1785 ET. SEQ., AGAINST ALL DEFENDANTS**  
9 **(BROUGHT AS AN INDIVIDUAL ACTION AND AS A CLASS**  
10 **ACTION)**

13 16. Plaintiffs incorporate in this cause of action the allegations contained in  
14 paragraphs 1 through 15, inclusive.

16 17. VIP PDL Services, LLC, a/k/a VIP Loan Shop, SCS Processing, LLC, a/k/a  
18 Everest Cash Advance, Action PDL Services, LLC, a/k/a Action Payday,  
19 BD PDL Services, LLC, a/k/a Bottom Dollar Payday, Integrity PDL  
20 Services, LLC, a/k/a Integrity Payday Loans, a/k/a IPL Today, My Quick  
21 Funds d/b/a Sierra Financial, LLC, and Fast EFunds a/k/a  
22 FastEfund.com were payday loan companies operating between 2009  
23 and 2014 from one of several overseas locations. Although the companies  
24 had no licenses to make loans in California, as required by California law,  
25 and despite cease and desist orders issued by the State of California, they  
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27

1 made tens of thousands of loans to California residents.

2 18. All of the loans were illegal for a number of reasons, including inter  
3 alia, because the lenders were not licensed and because they charged more  
4 in finance charges than permitted by California law. Under California law,  
5 such loans are and were deemed void by operation of law and the lender  
6 was deemed to have forfeited principal and interest.  
7  
8

9 19. By 2014, it was well known and understood in the financial industry,  
10 including in the collection industry, that these loans were illegal. All of  
11 the lenders shut down operations by 2015.  
12

13 20. Plaintiffs obtained loans from Bottom Dollar Payday and Everest Cash  
14 Advance 2011 and 2012.  
15

16 21. On a date unknown to Plaintiffs, the lenders assigned, transferred or sold  
17 the debt to Defendant NCA, which subsequently transferred it to Debt  
18 Management, which transferred it to Defendant Cooper. Defendant Mark  
19 Gray is the owner and sole manager of Cooper and controls all of its  
20 actions. In March 2017, Cooper and Mark Gray hired Defendant Midwest  
21 to collect the debt, using whatever means were necessary including by  
22 furnishing the debt information to the consumer reporting agencies.  
23  
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25 22. Knowing the debt was not enforceable in court and few if any  
26 borrowers would voluntarily pay such debt, Midwest decided to use the  
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1 leverage of credit-reporting to compel borrowers to make payments on  
2 the alleged debt.  
3

4 23. In any event, on May 13, 2018 with respect to Plaintiff Franklin, and  
5 on December 24, 2017 with respect to Plaintiffs Sampson and Munson,  
6 Midwest furnished information to consumer credit reporting agencies,  
7 including Equifax, Experian and TransUnion, stating that Plaintiffs owed  
8 money to the illegal lenders.  
9

10 24. Specifically, with respect to Plaintiff Franklin, Midwest furnished  
11 information claiming she owed \$308 to Bottom Dollar and \$1,125 to  
12 Everest Cash Advance and that the accounts were in collections and past  
13 due for years.  
14

15 25. After Franklin disputed these debts to TransUnion, the credit bureau  
16 contacted Midwest, which verified that the debt information was accurate.  
17 As a result, despite Plaintiffs' dispute, TransUnion refused to remove the  
18 debt information from her reports. TransUnion indicated the debt  
19 information would remain on her credit report through February 2019  
20

21 26. With respect to Plaintiff Sampson, on December 24, 2017, Midwest  
22 furnished information claiming she owed \$817 to Everest Cash Advance  
23 and that the account was in collections and past due for years.  
24

25 27. Shortly thereafter, Sampson received an alert from a credit monitoring  
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1 service and discovered the new collections account. She called the phone  
2 number associated with the collection agency and spoke to someone at  
3 Midwest Recovery. The agent told her that if she paid \$408, he would  
4 remove the debt from her credit report; otherwise it would remain. Under  
5 duress, and in an effort to remove the damaging adverse information, she  
6 paid the money. Shortly thereafter, the debt was removed from her credit  
7 reports.

8 28. With respect to Plaintiff Munson, Midwest furnished information  
9 claiming she owed \$505 to Bottom Dollar and that the account was in  
10 collections and past due for years.

11 29. Shortly thereafter, Munson became aware of the collections account.  
12 She wrote a dispute letter to Midwest, but there was no response. She  
13 then called Midwest and spoke to Rich Akerman there. He agreed to  
14 remove the debt from her credit report if he would pay the \$505. Under  
15 duress, and in an effort to remove the damaging adverse information, she  
16 paid the money. Shortly thereafter, the debt was removed from her credit  
17 reports.

18 30. However, as explained above, Plaintiffs owed no money to these  
19 lenders because any loans made by the lenders to her were void, which  
20 fact Defendant Midwest knew or should have known.

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1 31. Apart from the items reported by Midwest, Plaintiffs had good  
2 creditworthiness, but any consumer would have been significantly  
3 harmed by the addition of these "fresh collection" accounts to their credit  
4 reports.

5 32. During the class period, Defendant Midwest engaged in similar  
6 conduct with regard to the class members by furnishing false information  
7 to the consumer reporting agencies claiming that the class members owed  
8 money to the subject lenders even though all of the loans were void.  
9

10 33. Defendant Midwest's purpose for furnishing the false debt information  
11 to the consumer reporting agencies was to coerce Plaintiffs and the class  
12 members to make payments on the illegal loans, which payments would  
13 enrich Midwest.  
14

15 34. Plaintiffs are informed and believe, and thereupon allege, that some  
16 200 class members, such as Sampson and Munson, made payments under  
17 duress triggered by the illegal credit reporting practice. The amount paid  
18 was approximately, \$94,366. In the previous version of the complaint,  
19 Plaintiff Franklin stated that once information was obtained through  
20 discovery about the success of the efforts to coerce payments, she may  
21 seek to amend the complaint to allege additional causes of action and to  
22 add additional plaintiffs. She does that now.  
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1 35. As a result of Defendant Midwest's actions or inactions, one or more of  
2 the consumer reporting agencies continued to falsely report the status of  
3 Plaintiff and the Class Members' until an unknown date.

4

5 36. When Defendant Midwest furnished information regarding the  
6 particular debts to the reporting agencies, it knew or should have known  
7 that the payday loan debt was illegal and void.

8

9 37. Accordingly, Defendant Midwest violated Civil Code § 1785.25 (a) each  
10 time it furnished inaccurate or incomplete information about the  
11 particular debt to a reporting agency.

12

13 38. Defendants Cooper/Gray are liable for the foreseeable torts of their  
14 agent, Midwest, including the furnishing of inaccurate or incomplete  
15 information about the payday loan debt.

16

17 39. Each of Midwest's violations was a willful violation in that it  
18 intentionally and knowingly furnished inaccurate or incomplete  
19 information to the consumer credit reporting agencies for the purpose of  
20 extorting payment on the debts.

21

22 40. Plaintiffs and the Class Members are consumers within the meaning of  
23 section 1785.3 (b) of the California Consumer Credit Reporting Agencies  
24 Act in that they are natural individuals.

25

26 41. Plaintiffs and the Class Members suffered damages as a result of the  
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1 violations of Civil Code § 1785.25 (a) as set forth above in that their credit  
2 scores and credit ratings were adversely impacted by the false reporting  
3 of the debt.  
4

5 42. In addition, Plaintiffs suffered actual damages in the form of emotional  
6 distress, pain and suffering, humiliation, injury to reputation, and  
7 prelitigation attorney's fees incurred trying to clear her credit.  
8

9 43. Plaintiffs and each Class Member are entitled to recover actual  
10 damages pursuant to Civil Code § 1785.31 (a) (2) (A) including court costs,  
11 impairment of credit, loss of wages, attorney's fees and pain and suffering  
12 in an amount according to proof.  
13

14 44. Plaintiffs and each Class Member are entitled to recover punitive  
15 damage pursuant to Civil Code § 1785.31 (a) (2) (B) in the amount of  
16 \$5,000 against Defendants.  
17

18 45. In addition, the Class as a whole is entitled to recover punitive damages  
19 in an amount the court may allow. In determining the amount of award  
20 in any class action, the court shall consider among relevant factors the  
21 amount of any actual damages awarded, the frequency of the violations,  
22 the resources of the violator and the number of persons adversely affected.  
23

24 46. Further, Plaintiffs and the Class Members are entitled to injunctive  
25 relief pursuant to Civil Code § 1785.31 (b). Defendant Midwest must  
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1 update the information reported to the credit bureaus to delete all  
2 references to the debt and must not report the payday loan debt in the  
3 future.  
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5 **SECOND CAUSE OF ACTION FOR VIOLATION OF THE**  
6 **CALIFORNIA CONSUMER UNFAIR COMPETITION LAW,**  
7 **BUSINESS AND PROFESSIONS CODE § 17200 ET. SEQ.,**  
8 **AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL**  
9 **ACTION AND AS A CLASS ACTION)**  
10

11 47. Plaintiffs incorporate in this cause of action the allegations contained  
12 in paragraphs 1 through 46, inclusive.  
13

14 48. The Unfair Competition Law prohibits any person from engaging in  
15 unfair competition as that term is defined in Business and Professions  
16 Code § 17200, which includes any "unlawful, unfair or fraudulent business  
17 act or practice," "unfair, deceptive, untrue or misleading advertising," and  
18 any act prohibited by Chapter 1 (commencing with section 17500) of Part  
19 3 of Division 7 of the Business and Professions Code.  
20

21 49. During the relevant time frame, Defendants violated Civil Code §  
22 1788.13 (f) and 15 USC § 1692e(5) and (10) by threatening to report the  
23 alleged debts to the consumer reporting agencies even though they were  
24 not reportable and Civil Code § 1785.25 (a) by reporting false and  
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1 inaccurate information to the consumer reporting agencies as alleged  
2 above and therefore engaged in unfair competition.  
3

4 50. In addition, Defendants conduct was "unfair" in that they extorted  
5 money by threatening to do acts which were not authorized by law.  
6

7 51. As a proximate result of the violation of the UCL as set forth above,  
8 Plaintiffs Sampson and Munson suffered injury in fact (damage to their  
9 creditworthiness) and sustained monetary loss (approximately \$400-  
10 \$500) according to proof.  
11

12 52. Similarly, during the Class Period, each Member of the RESTITUTION  
13 SUBCLASS paid money to Defendants pursuant to the aforementioned  
14 extortion.  
15

16 53. Pursuant to Business and Professions Code § 17203 and § 17204,  
17 Plaintiffs are empowered to compel Defendants to restore to Plaintiffs and  
18 the Class Members the money or property that Defendants acquired as a  
19 result of any act which constitutes unfair competition.  
20

21 54. Further, Sampson and Munson and the Class Members are entitled to  
22 injunctive relief under the UCL. Defendants continue to try to collect on  
23 the invalid debts and even though they claim to have stopped reporting it  
24 for now, they continue to threaten to do so in order to pressure Class  
25 Members to pay.  
26  
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## REQUEST FOR JURY TRIAL

WHEREFORE, Plaintiffs request trial by jury.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment on all causes of action against Defendants as follows:

1. For an order certifying this matter as a class action;
2. For a declaration of the rights and liabilities of the parties including a declaration that Defendants cannot furnish information to consumer credit reporting agencies regarding the referenced payday loan debt;
3. For preliminary and permanent injunctive relief pursuant to Civil Code § 1785.31 (b) and Business and Professions Code § 17203 restraining and enjoining Defendants from threatening to report or reporting the debt information set forth above and requiring it to notify all consumer reporting agencies to remove that debt information;
4. For actual damages on the first cause of action according to proof;
5. For punitive or exemplary damages on the first cause of action;
6. For restitution on the second cause of action;
7. For interest on the sum of money awarded as damages or restitution;
8. For reasonable attorney's fees pursuant to Civil Code § 1785.31 (d) and (f), pursuant to the Private Attorney General doctrine in Code of Civil Procedure § 1021.5, pursuant to the "common fund" doctrine, and

1 pursuant to the "substantial benefit" doctrine.

2 9. For costs of suit incurred herein; and

3 10. For such other and further relief as the court may deem proper.

4 DATED: July 3, 2019

5 Respectfully submitted,

6 By

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9 JEFFREY WILENS  
10 Attorney for Plaintiff

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